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December 6, 2000

DEC - 6 2000

VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St., NW
Washington, DC 20554

Re: Common Carrier Bureau CC Docket No. 00-217 – In the Matter of the Joint Application of SBC Communications, Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma

Motion of Adelphia Business Solutions Investment, LLC to Accept Late-Filed Comments

Dear Ms. Salas:

Adelphia Business Solutions Investment, LLC ("Adelphia"), by its attorneys, respectfully requests permission to submit late-filed comments filed in the above-captioned proceeding.

An original and six (6) copies of this filing are enclosed. Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage-prepaid envelope provided. Should you have any questions concerning this matter, please do not hesitate to contact us. Please accept our sincere apologies for any confusion this may have caused the Commission.

Sincerely,



Russell M. Blau
Michael P. Donahue

Counsel for Adelphia Business Solutions
Investment, LLC

Enclosures

cc: John Stanley
Janice Myles
Terry Romine

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Before the
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Washington, DC. 20554

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In the Matter of)
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The Joint Application of SBC Communications,)
Inc., Southwestern Bell Telephone Company,)
and Southwestern Bell Communications)
Services, Inc. d/b/a Southwestern Bell Long)
Distance for Provision of In-Region, InterLATA)
Services in Kansas and Oklahoma)

CC Docket No. 00-217

MOTION TO ACCEPT LATE-FILED COMMENTS

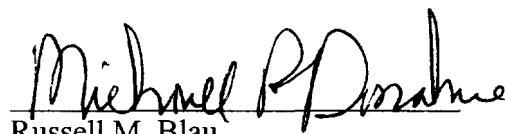
Adelphia Business Solutions Investment, LLC ("Adelphia"), by its undersigned counsel, hereby respectfully requests that the Federal Communications Commission ("Commission") accept the attached *Comments of Adelphia Business Solutions Investment, LLC* ("Comments") and accompanying Declaration of Brian M. Lippold in the above-captioned proceeding.

Adelphia's in-house counsel submitted its Comments electronically on November 15, 2000 and believed that it received acknowledgement that the Comments had been filed in a timely manner. Adelphia also served hard copies of its Comments on the Department of Justice and the state commissions. It has now come to Adelphia's attention that the Commission did not receive Adelphia's Comments. Adelphia hereby resubmits a hard copy of Adelphia's Comments and seeks leave to file them in the above-captioned case.

Acceptance of Adelphia's Comments is in the public interest since doing so would provide additional information to the Commission. In addition, Adelphia respectfully submits that the delay in the filing will not be prejudicial to any of the parties in this proceeding. As noted, a copy of these Comments was sent on November 15, 2000 to all parties identified in the Commission's order.

For the foregoing reasons, Adelpia respectfully requests that the Commission grant its motion and allow Adelpia's Comments to be filed late.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael P. Donahue". The signature is written in a cursive, flowing style.

Russell M. Blau

Michael P. Donahue

Swidler Berlin Shereff Friedman, LLP

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Dated: December 6, 2000

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Inc., Southwestern Bell Telephone Company,)	CC Docket No. 00-217
And Southwestern Bell Communications Services,)	
Inc. d/b/a Southwestern Bell Long Distance for)	
Provision of In-Region, InterLATA Services)	
In Kansas and Oklahoma)	

To: The Commission

COMMENTS OF
ADEPHIA BUSINESS SOLUTIONS INVESTMENT, LLC

Adelphia Business Solutions Investment, LLC ("Adelphia"), pursuant to the Public Notice issued October 26, 2000 by the Federal Communications Commission ("FCC") in the above-styled proceeding, hereby respectfully submits its comments to the above-referenced Application filed by the SBC Communications Inc. and its affiliated companies which seeks FCC approval to provide in-region, interLATA service in Kansas and Oklahoma. Adelphia urges the FCC to deny the application because Southwestern Bell Telephone Company ("SWBT") has not complied with all the checklist items set forth in Section 271, specifically item 4.

Adelphia is a facilities-based competitive local exchange carrier ("CLEC") and interexchange carrier ("IXC"). Adelphia, and its various operating affiliates around the country, are in the process of building high-speed, high-capacity advanced fiber optics networks to provide a package of services, including local and long distance telephone and data services to residential and business customers. Adelphia provides service in Kansas and Oklahoma. It participated in the Kansas 271 proceeding and filed comments addressing one issue: SWBT's

repeated failures in provisioning unbundled loops to Adelphia in a timely manner.¹ Although Adelphia and SWBT have met to discuss the issues raised in the Kansas filing, the issues have not been resolved.

SUMMARY

Although SWBT's application reports that it "fully complies" in this all important service criterion, Adelphia's own measurements of SWBT's performance in this regard tell a very different story. Adelphia's statistics, which are reported in the attached Declaration of Brian Lippold, the General Manager for the Kansas region, demonstrate that SWBT, in fact, has failed to timely provision 4-wire loops from itself to Adelphia's customers more than 60 percent of the time. SWBT's provisioning of 2-wire loops (a much smaller percentage of Adelphia's business) is also deficient. Finally, Adelphia's evidence demonstrates that SWBT has caused service outages in approximately 5 percent of *all* service cutovers. In the nomenclature of section 271 of the Act, SWBT has failed to demonstrate compliance with item 4 of the competitive checklist. For this reason, Adelphia urges the FCC to deny SWBT's application at this time.

Just as alarming as the deficient service that Adelphia has received from SWBT is the disconnect between the statistics reported in SWBT's application and Adelphia's own measurements. As reported below, and explained in Mr. Lippold's Declaration, Adelphia has carefully tracked the service it has received from SWBT; and Adelphia's statistics differ markedly from those presented in SWBT's application. Adelphia met with representatives of SWBT in September 2000, in part to reconcile its data with that of SWBT's representatives. However, at the meeting, the SWBT representatives did not challenge the Adelphia statistics, and

¹ During the Kansas proceeding, Adelphia was known as Adelphia Business Solutions of Kansas, LLC. Since those filings, a corporate reorganization has occurred, which resulted in the Kansas entity being "rolled-up" into Adelphia Business Solutions Investment, LLC.

no reconcillations occurred. Resolutions of the issues raised has not occurred, and Adelphia continues to encounter difficulty with provisioning unbundled loops from SWBT in a timely manner.

ARGUMENT

Section 271 requires proof that the applicant BOC “is providing” and has “fully implemented” “each” item of the Competitive Checklist. 47 U.S.C. §§ 271(c)(2)(A), (c)(2)(B), (d)(3)(A)(i). To be “providing” a Checklist item, the BOC must show not only “a concrete and specific legal obligation” to furnish the item pursuant to an interconnection agreement, but “must demonstrate that it is presently ready to furnish each Checklist item *in the quantities that competitors may reasonably demand and at an acceptable level of quality.*”² To have “fully implemented” the Checklist, moreover, the BOC must demonstrate that it has satisfied each of its Checklist obligations at the time of its filing. Mere “paper promises” of future compliance do not suffice. *Id.* ¶¶ 55, 179; *see also* 47 U.S.C. § 160(d) (“the [Federal Communications] Commission may not forbear from applying the requirements of Section 251(c) or 271 . . . until it determines that those requirements have been fully implemented”).

SWBT bears the burden of establishing that it is providing the services and facilities required by CLECs in a nondiscriminatory manner.³ In order to meet this burden, SWBT must *demonstrate* that it is “providing” services to competitive LECs “at an acceptable level of quality.” *See Ameritech Michigan Order* ¶ 110.

² *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 13 FCC Rcd. 20543, ¶ 110 (1997) (“*Ameritech Michigan Order*”).

³ *See* Memorandum Opinion and Order, *Application by New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York*, No. FCC 99-404 (Dec. 22, 1999) (“*Bell Atlantic New York Order*”) ¶ 47; *Ameritech Michigan Order* ¶ 43.

SWBT's application contends that its performance satisfies section 271 performance requirements. Adelphia's own measures reflect an entirely different level of performance. For the period from March 1999 until July 2000, SWBT has been late provisioning 4-wire loops from itself to Adelphia (the cutover process) an astounding 62 percent of the time.⁴ And when SWBT is late, it is not just by a couple of hours. Rather, in those instances in which SWBT is tardy providing service, it is usually late by almost a week.⁵ For 2-wire loops, SWBT has been late provisioning Adelphia's customers nearly 30 percent of the time. Additionally, SWBT has caused outages in 5 percent of all customer conversions – well above acceptable and benchmark levels. *Id.* ¶ 7.

The impact of SWBT's provisioning deficiencies cannot be overstated. After the sales and solicitation process, Adelphia's meeting the promised cutover date marks the first service opportunity that the customer has to evaluate Adelphia's service. When the cutover is late, it is Adelphia that must answer to the customer's dissatisfaction (customers are not interested in hearing Adelphia attempt to shift the blame for missing the cutover date on SWBT), and that is hardly the best way to begin a relationship.

SWBT's deficiencies also affect Adelphia's internal operations. For example, Adelphia has learned that it can reduce the number of service outages that occur during the cutover process if it repeatedly reminds SWBT technicians about the scheduled cutover. Such efforts require an enormous and wasteful diversion of the time of Adelphia employees that could be better spent soliciting new customers and insuring that customers receive first-rate service.

⁴ See Declaration of Brian M. Lippold ¶ 4.

⁵ *Id.* Although SWBT purportedly tracks its own performance in terms of cut-overs performed within 2-hours of the scheduled time, Adelphia tracks SWBT's performance in terms of days, not hours. Thus, Adelphia's statistics likely significantly understate the dismal state of SWBT's actual performance.

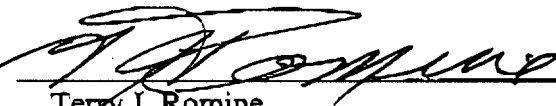
Adelphia did meet with SWBT to address the issues that Adelphia presented in its comments in the Kansas 271 proceedings. It was Adelphia's impression from the meeting that SWBT did not dispute Adelphia's statistics or description of the issues.⁶ Since the meeting, Adelphia has not seen any improvement in SWBT's performance.

CONCLUSION

For the foregoing reasons, the FCC should deny the subject Application.

Respectfully submitted,

ADELPHIA BUSINESS SOLUTIONS
INVESTMENT, LLC

By 
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Date: November 15, 2000

⁶ *Id.* ¶ 14.

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DECLARATION OF BRIAN M. LIPPOLD

1. My name is Brian M. Lippold. I have been employed by Adelphia Business Solutions Inc. of Kansas (“Adelphia”) since 1993. I am the General Manager responsible for the Kansas, Oklahoma, and Kansas City, MO region. I am responsible for all facets of Adelphia’s business in this region. I have extensive experience in the telecommunications industry. Prior to joining Adelphia, I was Vice President of Engineering and Operations at Long Distance North, a Vermont-based New England long-distance division of Rochester Telephone from 1988 to 1993. I also served as Network Operations Manager for American Communications, Inc. of Wichita from 1986 to 1988 and as Network Operations Manager for Dial-Net, a Sioux Falls, SD, long-distance reseller from 1985 – 1986. I have personal knowledge of the facts set forth herein and I make this declaration in support of Adelphia’s Comments in this proceeding.
2. Adelphia is a facilities based competitive local exchange carrier (“CLEC”). Among other aspects of its business, Adelphia purchases unbundled local loops (both 2-wire and 4-wire) from SWBT. Adelphia also provides service to end-users over its own facilities. All traffic is routed through Adelphia’s own switches.

3. Under my direction and control, Adelphia has collected data on Southwestern Bell Telephone Company's ("SWBT's") provisioning of Adelphia's orders. The analysis of the data is summarized below.
4. For all orders for four-wire unbundled loops placed with SWBT for the period March 3, 1999 through July 1, 2000 (171 in total), SWBT was late delivering service from itself to Adelphia 62 percent of the time. On those occasions when SWBT failed to provide service by the FOC due date, SWBT was late by, on average, almost a week (5.27 days).
5. For all of Adelphia's orders for two-wire unbundled loops for the same time period as in Paragraph 4 above, SWBT has been late provisioning 2-wire loops 29 percent of the time.
6. All of the provisioning delays described in Paragraphs 4 and 5 are SWBT caused delays.
7. In addition, Adelphia customers lost service during the cut-over process due to SWBT provisioning errors. Certain of the outages are attributable to SWBT-caused number portability problems and certain of the outages were caused by SWBT's disconnecting the customer in advance of the porting due date. The data demonstrates that SWBT errors have caused customer service outages approximately 5 percent of the time.
8. On September 11, 2000, a meeting was held between Adelphia and SWBT, which was held at the Kansas Corporation Commission's behest. During this meeting, SWBT and Adelphia discussed the operational difficulties that Adelphia has experienced in attempting to provision service to its customers utilizing SWBT's facilities.
9. Our meeting revealed that SWBT has significant deficiencies in their order process and engineering procedures that make it virtually impossible for SWBT to provide CLECs with timely reliable UNE services to CLECs such as Adelphia. After Adelphia submits an order, more than 90 percent of UNE orders are immediately placed into jeopardy status. At the

same time, however, a Firm Order Confirmation (FOC), with a due date, is mechanically issued within 5 hours of order receipt. SWBT explained that the FOC due date is simply a notification that all the necessary information to process the order has been received. SWBT views the due date noted on the FOC as the *Desired Due Date* (DDD), not an agreement by SWBT that they will provide service by that date. At no point in the process does SWBT provide Adelphia with any confirmation that SWBT will meet a specific due date.

10. Moreover, SWBT has no process to communicate to CLECs that DDDs will not be met, even if SWBT knows this fact in advance. There are several reasons for this lack of communication. First, there appears to be no individual or group within SWBT charged with overseeing the overall process, and there is thus no coordination between the different engineering and field installation groups who are collectively responsible for provisioning CLEC orders.
11. Second, the internal incentives that SWBT provides its employees who are servicing CLEC orders do not promote the proper flow of information. SWBT staff explained at the meeting that their engineering and installation technicians are measured on their ability to meet specific timeframes associated with their individual portions of the installation process. Accordingly, the engineers and technicians working the order are reluctant to admit that they might not meet deadlines and will continue to work the order right up to those deadlines, even when the chances of meeting the DDD are remote. This often means that SWBT will continue working a service order until 11:59 p.m. on the DDD without informing the CLEC that the DDD will not be met. Even when a DDD is missed, SWBT simply continues with their engineering and installation process until the service is “delivered.” A large percentage of the orders are delivered after the DDD.

12. This last-minute hand-off delays the entire order and unduly burdens those functional areas that are charged with processing the next phase of the order. Moreover, this process incentivizes technicians to close out an order as completed – i.e., all sub-tasks performed – when the order has not been actually finished and installed. Because of these incentives, SWBT staff will continue working the order without admitting there may be problems, and the customer is never notified that the DDD may not be met.
13. SWBT explained that a principal reason that DDDs are missed is because of lack of facilities. SWBT's failure to make the necessary inquiry into the availability of facilities and to communicate the results of that inquiry to CLECs early in the process would go a long way toward resolving the difficulties discussed above.
14. SWBT admitted at the meeting that its regulatory performance measures had little relationship to the actual service that CLECs received from SWBT. Indeed, Mr. David Smith, SWBT's Area Manager for Interconnection Services, said that the performance measures maintained by SWBT do not reflect the significance of the problems that Adelphia is experiencing and that, regardless of whose data is used, the problems that Adelphia has been experiencing are significant. Thus, the parties did not review the data in Adelphia's filing because SWBT did not dispute the service measures contained therein. Indeed, Adelphia has ample documentation to support its difficulties in provisioning unbundled loops, which it provided SWBT.
15. UNE orders placed by Adelphia primarily involve facilities from an end-user's location to a specific Adelphia/SWBT Point of Interconnection (POI). The only way for SWBT to be confident they are delivering a quality service to the CLEC is to test the service from the end-user location to the POI. SWBT is not conducting these tests, as it should. If it were, many

of the problems that Adelphia routinely encounters – including missing cross connects and circuit segments – could be avoided.

16. Not only does SWBT itself fail to conduct internal testing, but as a result of SWBT's procedures, which push the provisioning process up to the last minute, Adelphia is often unable to conduct necessary testing itself. For example, SWBT frequently provides notice to Adelphia of a provisioned line after normal business hours and leaves a message requesting immediate acceptance of the order. The call may be on the DDD or it may be days past the DDD. If, however, Adelphia is not immediately available to test the service, SWBT considers the order as accepted, moves the order to installation status in the SWBT system, and begins billing for the service. Also, SWBT has been known to claim that a line has been tested when it has clearly not been.
17. If, after Adelphia has performed acceptance testing, the circuit is found to not work, SWBT's maintenance technicians, not the original installation crews, are then sent out to troubleshoot a circuit that they believe was a working circuit at one time. On a high percentage of the Adelphia orders, the maintenance staff finds that whole segments or cross-connects associated with the original work order were never installed. Furthermore, SWBT does not automatically credit Adelphia for the amount of time that the circuit was not functional. SWBT tells us that it is Adelphia's responsibility to seek credit for the service by filing a claim with the billing department. This policy is not only poor customer service on SWBT's part, but it also reduces accountability within SWBT, because those who are responsible for installing a good working service order are not held accountable for the quality of their work.
18. Interestingly, SWBT previously provided Adelphia with a 24 – 48 hour grace period in which to test the service prior to considering the order as accepted. If Adelphia found a

problem with the ordered service within the 24 – 48 hour period, the SWBT installation team responsible for the original installation was called out to troubleshoot their work and billing for the service did not begin until Adelphia accepted the service as working. SWBT claims that this policy was abolished in the face of increased order volume and their need to meet the regulatory performance measurements. This example illustrates how SWBT's regulatory performance measurements bear little or no resemblance to the actual service that CLECs receive.

19. That concludes my Declaration at this time.

I, Brian M. Lippold, declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated:

11/16/00



Brian M. Lippold